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was rescinded because of fraud in its procurement, or the failure of the vendee to comply with his contract.

2. TRUSTEES—*Sale under deed—Prior judgment—Application of purchase-money—Liability of trustee.* Where a trustee in a deed of trust to secure a debt has sold the trust subject, and has faithfully executed the trust reposed in him, and disbursed the funds that came into his hands in the payment of the debt secured and the expenses of sale, he cannot be held responsible for the proceeds of such sale by a prior judgment creditor, whatever may be the rights of such creditor against the land itself.

3. JUDGMENTS—*Successive alienations of land—Order of liability.* Lands being liable for judgments in the inverse order of alienation, those primarily liable should be first exhausted before proceeding against a purchaser whose land is only secondarily liable.

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SOMERS v. COMMONWEALTH.—Decided at Richmond, March 30, 1899.—*Riely, J.* Absent, *Cardwell, J.*

1. STATUTES—*Repeal by implication.* The repeal of a statute by implication is not favored, and the presumption is always against the intention to repeal where express terms are not used, or the late statute does not amend the former. Usually the two statutes must be irreconcilable to justify the presumption of an intention to repeal one by the other. But where the later statute embraces the whole subject of the former and is plainly substituted for it, the former will be deemed to be repealed.

2. OYSTERS—*Dredging.* Dredging on private oyster grounds is not a criminal offence, and has not been since March 3, 1898.

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JONES v. MORRIS.—Decided at Richmond, March 30, 1899—*Keith, P.*

1. CRIMINAL LAW—*Irregularities in warrant—Waiver—Twice in jeopardy.* An accused may waive irregularities in the warrant for his arrest, and where he has done so, and the justice has jurisdiction of his person and of the offence with which he is charged, and hears the charge on its merits, the judgment of the justice is final and conclusive, and the guilt or innocence of the accused of that charge can never again be called in question.

2. CRIMINAL LAW—*Larceny—Warrant—"Feloniously"—Acquittal.* The omission of the word "feloniously" from a warrant charging an accused with larceny will not vitiate a judgment of acquittal. No objection having been taken to the omission, and the charge having been fully investigated, the judgment of acquittal is a complete bar to any further prosecution for the same offence.

3. INSTRUCTIONS—*Evidence to support.* Any evidence tending to prove a fact is sufficient to justify the court in giving an instruction applicable to it, if requested so to do, even though the evidence be so slight as to be insufficient to support a verdict founded on it.

4. GOOD CHARACTER—*Presumption.* As it is the duty of the owner of a tug-boat to place a man of good character in the position of captain of the boat, it is to be presumed, in the absence of evidence to the contrary, that he exercised that care and discretion which the law imposed upon him as a duty.

5. **MALICIOUS PROSECUTION**—*Advice of counsel as defence.* In an action for malicious prosecution, if the defendant relies upon the defence that he acted under the advice of counsel and not upon a fixed determination of his own, the burden is on him to prove that he sought counsel with an honest purpose of being informed as to the law, that he made a full, correct, and honest disclosure to his counsel of all the material facts within his knowledge bearing on the guilt of the plaintiff, and that he was in good faith guided by the advice of such counsel in causing the arrest of the plaintiff. Whether such disclosures were made, or the defendant in good faith acted on such advice, are questions for the jury, under the evidence in the particular case.

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**SOUTHERN RAILWAY CO. v. BRUCE'S ADM'R.**—Decided at Richmond, April 6, 1899.—*Cardwell, J.*

1. **INSTRUCTIONS**—*Inapplicable—Misleading.* Although an instruction correctly states the law, yet if not applicable to the facts and circumstances of the case it tends to mislead the jury and should not be given.

2. **RAILROADS**—*Crossing—Traveller—Licensee.* A traveller injured by a railroad train at a public crossing stands on a higher footing than a licensee walking on the track, and even among licensees a higher degree of care is required of a person of mature years and in the possession of all his faculties than of an infant of tender years.

3. **CONTRIBUTORY NEGLIGENCE**—*How shown—Burden of proof.* Although, as a general rule, the burden is upon the defendant to show the contributory negligence of the plaintiff, if it be relied on as a ground of defence, yet if the contributory negligence of the plaintiff is disclosed by his own evidence, or may be fairly inferred from all the facts and circumstances of the case, the burden still rests on him to relieve himself of the suspicion of his own negligence, and it is error to instruct the jury, without qualification, that the burden is on the defendant to prove the contributory negligence of the plaintiff.

4. **RAILROADS**—*Licensee—Care required—Contributory negligence—Case at bar.* It is the duty of a railroad company to use reasonable care to avoid injury to a licensee on its track, but it is equally the duty of the licensee to take ordinary precautions for his own safety, even if there be negligence on the part of the company, and if through his failure to do so he is injured he cannot recover. The question is not whether the plaintiff's negligence caused, but whether it contributed to his injury, and if it did there can be no recovery therefor. In the case at bar the plaintiff's intestate walked on the track when there was another safe, suitable, and convenient walkway. He apparently neither looked nor listened for approaching trains, and failed to get off the track though others near him did so.

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**NORFOLK & WESTERN RAILWAY CO. AND OTHERS v. OLD DOMINION BAGGAGE CO.**—Decided at Richmond, April 6, 1899.—*Buchanan, J.*

1. **INJUNCTIONS**—*Dissolution—Answers.* As a general rule, subject to some exceptions, an injunction properly granted will not be dissolved until the defendant has answered.

2. **APPEAL AND ERROR**—*Decree overruling demurrer and giving leave to answer.* No appeal lies from a decree overruling a demurrer, giving the defendant leave to